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UNCLAS SECTION 01 OF 02 TAIPEI 001318

SIPDIS

STATE FOR EAP/TC
STATE PASS USTR FOR KATZ AND RAGLAND
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COMMERCE PASS TO USPTO GIN, BROWNING, AND LOC STEPP
USDOJ FOR JOHN ZACHARIA

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PREL](#) [PGOV](#) [TW](#)

SUBJECT: Taiwan IPR: 301 Watch List OCR Update Three

Reftels: A) Secstate 43143, B) Taipei 950, C) Taipei 1039, D)
Taipei 0008, E) Taipei 1258

11. (SBU) Summary: Taiwan has now made measurable progress on all three areas outlined in May's Special 301 Watch List submission for Taiwan (ref A). Following the July opening of the Intellectual Property (IP) Court (ref B) and ongoing actions under the Campus IP Action Plan, the Taiwan Intellectual Property Office (TIPO) forwarded to the Executive Yuan (EY) on August 27 a draft version of internet service provider (ISP) amendments to Taiwan's Copyright Act. TIPO predicts that the EY will approve this version of the bill and send it to the Legislative Yuan for consideration by the end of September. The Ministry of Education continues to engage with rights-holder groups, and has affirmed that the Ministry's island-wide academic network TANet would be treated as an ISP under the current draft version of the ISP bill. We have asked Taiwan officials to provide assurances of support for passage of the bill in its current form. We will also continue to monitor and encourage support for the bill until its passage. Given progress to date and prospects for passage of acceptable, if not ideal, ISP legislation, we recommend that Taiwan be removed from the 301 Watch List. End summary.

ISP Bill Moving Closer to Goal Line

12. (SBU) On August 27, TIPO sent to the EY its final draft version of ISP-related amendments to the Copyright Act. According to TIPO Deputy Director General Margaret Chen, TIPO expects the EY to approve the draft amendments in September, and forward the draft on to the Legislative Yuan (LY) for approval soon afterwards. Chen does not know when the LY will take a vote on the amendments, however, nor could she forecast whether the LY would pass the amendments. [Note: The LY's fall session started on September 1 and wraps up end-December. End note.]

13. (SBU) The latest version of the ISP-related amendments does not include U.S.-suggested language included in Article 88 of previous versions that specifically referred to secondary (or contributory) liability for ISPs that knowingly host copyright-infringing material. Instead, the bill includes a written opinion from the Ministry of Justice stating ISP operators are subject to secondary liability under Article 185 of the Civil Code. On September 2, local rights-holder groups reaffirmed to econoff that they would prefer to have the concept of secondary liability clearly laid out in the bill, but can accept the amendment's current wording. Some rights-holder groups have also told AIT that after TIPO submits the bill to the LY, a KMT Legislator will add language related to secondary liability back into the amendment (ref C). The bill also does not reflect U.S. recommendations that ISPs should be liable for infringing material that they "should have knowledge" of, not just

for infringing material that they "have knowledge" of, though local rights-holder groups have not pushed AIT to address this issue.

MOE Action Plan Improves, Rights-holders Still Concerned

14. (SBU) During an August 19 meeting with Ministry of Education (MOE) Computer Center Deputy Director Han Shan-min, Ms. Han updated econoff on the continuing work of the MOE under its Campus IP Action Plan. Following a baseline survey made in June 2007 on network management practices at 16 universities, the Computer Center is undertaking another survey of 10 schools to evaluate their enforcement efforts after the Action Plan's first year. The MOE will compile the results of this survey by the end of September, and use these results as the basis of a new enforcement report with more detailed indicators in October or November.

15. (SBU) The MOE has also increased feedback to rights-holders under the Action Plan. In response to rights-holder requests--and AIT encouragement--the Computer Center instituted a new SOP for rights-holder complaints, designating a staff member as the complaints point-of-contact (POC) and producing more detailed, bi-monthly reports on reported infringements. The last such report came out on August 21. Han also informed econoff that on May 8, the MOE ordered all universities to block installation of peer-to-peer (P2P) software on all publicly-available terminals, as well as make periodic checks for such software. This move is a tightening of restrictions implemented by the MOE in fall 2007 that curbed student access to P2P websites and software (ref D).

16. (SBU) In addition, although the MOE had been wary of classifying

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TANet as a normal ISP, Han said that the MOE now agrees that TANet meets the ISP definition included in the draft Copyright Law amendments that TIPO passed to the EY last week. TANet administrators at Taiwan's schools would therefore be subject to the revised law's notice and takedown requirements. Han said if the EY passes the current version of the amendments, the MOE would work out enforcement rules for this purpose, and work with individual universities to implement notice-and-takedown measures.

17. (SBU) Local rights-holder groups, however, told econoff on September 2 that they remain worried that the MOE may try to have the LY reinsert language that would exempt TANet from the bill's provisions. Rights-holder also told econoff they are still not satisfied with the MOE's efforts under the Action Plan. According to Robin Lee of the recording-industry group IFPI, the MOE's new, bi-monthly reports do provide general information and statistics about how infringement complaints are being handled by individual universities, but the reports do not provide specific feedback about how each complaint is being handled or punished, rendering the reports "almost useless." Representatives from the software, movie, and book-publishing rights-holder groups agree with Lee that although the MOE has designated an infringement-complaints POC, the Ministry does not have adequate staff to address the industry's problems on TANet. Rights-holders told econoff that they have asked MOE to establish an enforcement group within the Computer Center.

IP Court Has Slow First Month

18. (SBU) Opened with fanfare on July 1 (ref B), the Taiwan Intellectual Property Court had a lower-than-expected caseload during its first two months. IP Court President Kao Shiow-jen recently told econoff the IP court has received only 146 cases, mostly criminal appeals and administrative cases, none of which have reached the trial stage. Kao said the IP Court is disappointed by the low number of cases received, especially first-instance civil cases, since the Judicial Yuan (JY) estimates the Court is able to handle about 250 cases per month. Kao explained many plaintiffs in civil cases are still watching and considering whether to use this new venue, or file their cases as before in a district court. Kao believes that more plaintiffs will take their civil complaints

directly to the IP court when they realize the Court's judges can effectively and correctly enforce Taiwan's patent, trademark, and copyright laws.

Comment

19. (SBU) We assess that Taiwan continues to make measurable progress on the key areas outlined by the U.S. in this year's Special 301 Watch List submission for Taiwan. As we noted in ref C, the main remaining issue is Taiwan's progress toward passing an acceptable version of the ISP amendment. Rights-holder groups, ISPs, and web-portal operators all tell us that they can live with the amendment's current wording, although rights-holder groups would prefer that the final version include "Article 88" language clearly referencing secondary liability, and also worry that the MOE may try to have language reinserted into the bill that would exempt TANet from its requirements. We have already requested a written expression of support for the bill's passage (ref E), and we will follow up with EY officials to encourage Taiwan to pass as strong a bill as possible. If MOEA continues to support the bill's passage in its current form, we recommend that Taiwan be removed from the 301 Watch List at the end of the out-of-cycle review. End comment.